

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

GARY MCKINNIE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 1:17-cv-01011-JDB-egb

Case No. 1:14-cr-10103-JDB-1

Case No. 1:15-cr-10098-JDB-1

**ORDER DIRECTING CLERK TO MODIFY DOCKET
AND
DIRECTING GOVERNMENT TO RESPOND TO PETITION**

On January 17, 2017, Petitioner, Gary McKinnie, filed a *pro se* “Motion for Transfer of Defendant’s Firearms to a Responsible Third Party.” (ECF No. 1.)

Although such motions are sometimes filed and litigated in a petitioner’s underlying criminal case, a court may hear a defendant’s request for the return of his seized property in a separate civil action and treat it as an initial civil pleading. *See, e.g., Hill v. United States*, No. 1:12CV92, 2013 WL 1192312, at *1 (N.D.W. Va. Mar. 22, 2013) (directing “the Clerk of Court [to] remove[] [the] motion from [the] closed criminal case . . . and file[] it as the initial pleading in [a] civil case.”) The Clerk is therefore DIRECTED to terminate the motion at docket entry ECF No. 1 and designate the document as “Petition for Return of Property.”

The Court has made a preliminary review of the petition and finds that summary dismissal is not warranted. Therefore, Respondent, United States of America, shall have twenty-eight (28) days from the date of this order to file a response to the petition. Petitioner shall have twenty-eight (28) days after service of the response to file any reply that he may have.

IT IS SO ORDERED this 16th day of May 2017.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE